IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7106 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Petitioner(s)

Versus

INDRAVADAN K SONI - Respondent(s)

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Appearance :

MR NAGESH C SOOD for Petitioner No(s).: 1.

MR GK RATHOD for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 27/07/2005

CAV **JUDGMENT**

1.By filing this petition under Articles 226 and 227 of the Constitution of India, the petitioner – Gujarat State Road Transport Corporation has challenged the

judgment and award passed by the Industrial Tribunal in Reference (IT) No.138 of 1999 dated 18.7.2001 by which the Industrial Tribunal has set aside the order imposing punishment upon the respondent workman and further directed to pay the consequential benefits to the respondent workman and Rs.500/- by way of costs.

2. It appears from the record that an accident was occurred on 22.7.1993 and because of the said accident, six persons were died on the spot. Considering the fact that the respondent workman was negligent, the chargesheet was issued and in the departmental inquiry, without considering the reply filed by the respondent workman and the evidence produced on record, the respondent workman was dismissed from service. It appears that the first appeal was rejected and in the second appeal, the order was passed allowing the second appeal partly and quashed and set aside the order of dismissal and awarded the punishment putting the respondent workman in a lower minimum pay scale of the driver category and no back wages for the intervening period was paid. Being aggrieved by the order of the second appellate authority, the respondent workman had raised the industrial dispute, which came to be numbered as Reference (IT) No.138 of 1999. Ultimately, the Industrial Tribunal, after hearing the parties and

appreciating the evidence on record passed the judgment and order on 18.7.2001 by which the Industrial Tribunal has set aside the order of punishment and directed the petitioner to pay consequential benefits to the respondent workman as well as Rs.500/- by way of costs. The petitioner Corporation has challenged the judgment and award dated 18.7.2001 by way of this petition under Articles 226 and 227 of the Constitution of India.

3. Heard the learned advocates for the parties.

4. Mr.Sood, learned AGP appearing for the petitioner Corporation has vehemently submitted that the Industrial Tribunal has erred in not appreciating the fact that the findings of the Inquiry Officer were based on cogent evidence and the report of the Inquiry Officer was in consonance with the rules. It is submitted that the Industrial Tribunal has only jurisdiction to decide the correction making process and has no jurisdiction to decide the correction of the decision itself. He submitted that the Industrial Tribunal has erred in not appreciating the fact that the respondent in his deposition had admitted the factum of accident which had caused heavy losses to the petitioner. It is, therefore, requested to allow the present petition by quashing and setting aside the impugned judgment and award dated 18.7.2001 passed by

the Industrial Tribunal in Reference (IT) No.138 of 1999.

5. On the other-hand, Mr.G.K.Rathod, learned advocate appearing for the respondent workman has submitted that the petition under Articles 226 and 227 of the Constitution of India is not maintainable since the Industrial Tribunal had given a finding that the charge is not proved. He submitted that during the course of departmental inquiry, only reporter was examined and no other witness was examined for proving the charge. It is further submitted that the reporter has no personal knowledge about the accident because he was not present at the time of occurrence of the accident. He submitted that, admittedly, no eye witness was examined during the course of inquiry. He submitted that the punishment imposed upon the respondent workman is very harsh. He submitted that the respondent workman has been acquitted in Criminal Case No.2580 of 1993 as per the order passed by 3rd Joint Judicial Magistrate, First Class, Gandhinagar dated 9.10.2001 for the same charge of rach and negligent driving. It is, therefore, submitted by the learned advocate appearing for the respondent workman to dismiss the present petition with costs.

6. From the factual matrix as set out herein above, it can

be seen that an accident took place on 22.7.1993 which resulted into death of six persons on the spot for which the petitioner Corporation has issued the chargesheet to the respondent workman. Ultimately, the respondent workman was dismissed from service. The said order of dismissal was challenged by the respondent workman before the first appellate authority by way of first appeal, which came to be rejected. Thereafter, the respondent workman preferred the second appeal before the second appellate authority which came to be partly allowed and the respondent workman was ordered to be reinstated in service with the punishment by way of putting him in a lower minimum pay scale of driver category. The respondent workman had challenged the said order of punishment before the Industrial Tribunal, Ahmedabad by way of Reference, being Reference (IT) No.138 of 1999. Ultimately, the Industrial Tribunal, Ahmedabad vide its judgment and award dated 18.7.2001 allowed the reference by quashing and setting aside the order imposing the punishment upon the respondent workman.

7. At the time of hearing of this petition, it is submitted by Mr.G.K.Rathod, learned advocate appearing for the respondent workman that the respondent workman has already retired from service on attaining the age

of superannuation, i.e., on 31.8.1998. In the present case, the Industrial Tribunal after appreciation of the evidence has come to the conclusion that there was no negligence on the part of the respondent workman, and, therefore, no punishment could have been imposed upon the respondent workman. The said conclusion has been arrived at by the Industrial Tribunal after appreciation of the evidence. It is required to be noted that this is a petition under Article 227 of the Constitution of India, and, this court cannot reappreciate the evidence while exercising the jurisdiction under Article 227 of the Constitution of India.

8. The present petition is filed, admittedly, under Article 227 of the Constitution of India. It is now well settled that the High Court has limited jurisdiction under Article 227 of the Constitution of India. A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227 of the Constitution of India unless the jurisdictional error is pointed out. In the present case, no jurisdictional error is committed by the Industrial Tribunal while passing the impugned judgment and award and, therefore, no interference of this Court is called for while exercising the

supervisory jurisdiction under Article 227 of the Constitution of India. Further, the charge levelled against the respondent workman is also not proved.

9. Considering the facts and circumstances of the case, no interference of this Court is called for, and, therefore, the judgment and order passed by the Industrial Tribunal, Ahmedabad is hereby confirmed.

10. In the result, this petition fails and the same is dismissed. Rule is discharged with no order as to costs.

(SHARAD D.DAVE,J)

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